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Letter dated 25 October 2017 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit to you a note by the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW) covering the actions and decisions taken in relation to the work of the OPCW Fact-Finding Mission in the Syrian Arab Republic (see annex).

I would be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) Antonio **Guterres**

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Annex

[Original: Arabic, Chinese, English, French, Russian and Spanish]

Please find attached a note by the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW) that covers the actions and decisions taken in relation to the work of the fact-finding mission (see enclosure). A number of comments and questions have recently been raised on the work of the fact-finding mission and the decision not to deploy the mission to Khan Shaykhun. I believe it is important that OPCW provide the present note to assist in clarifying the situation.

I have circulated the present note to all States parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

(*Signed*) Ahmet **Üzümcü**

Enclosure

[Original: Arabic, Chinese, English, French, Russian and Spanish]

Note by the Technical Secretariat

Further clarifications of why the Organisation for the Prohibition of Chemical Weapons fact-finding mission in the Syrian Arab Republic did not deploy to Khan Shaykhun

1. The OPCW Fact-Finding Mission (FFM), in its "Report of the OPCW Fact-Finding Mission in Syria Regarding an Alleged Incident in Khan Shaykhun, Syrian Arab Republic, April 2017" (S/1510/2017, dated 29 June 2017) (hereinafter "the FFM Report"), concluded that, while the conditions of a safe visit to Khan Shaykhun were not met, a large number of people, some of whom died, were exposed to sarin, and that the release that caused the exposure was likely initiated in the vicinity of a crater in the road, located close to the silos in the northern part of the town. The FFM further concluded that such a release can only be determined as the use of the Schedule 1(A) chemical sarin as a chemical weapon.[1]

2. The Technical Secretariat (hereinafter "the Secretariat") recalls that the FFM was set up in May 2014 to "establish the facts surrounding allegations of the use of toxic chemicals, reportedly chlorine, for hostile purposes in the Syrian Arab Republic" on the basis of the OPCW Director-General's authority under the Chemical Weapons Convention (hereinafter "the Convention") to seek to uphold at all times the object and purpose of the Convention, as reinforced by the relevant decisions of the Executive Council (hereinafter "the Council") and the United Nations Security Council resolution (UNSCR) 2118 (2013).

3. The Terms of Reference of the FFM[2] were mutually agreed upon by the OPCW and the Syrian Arab Republic through the exchange of letters between the Director General and the Government of the Syrian Arab Republic, dated 1 and 10 May 2014.

4. The continuation of the FFM was endorsed by the Council in decision EC-M-48/DEC.1, dated 4 February 2015, as recalled by UNSCR 2209 (2015), and subsequently, decision EC-M-50/DEC.1, dated 23 November 2015. Both of these Council decisions and UNSCR 2209 (2015) require the FFM to study all available information relating to allegations of the use of chemical weapons in Syria, including that provided by the Syrian Arab Republic as well as by others.

5. The FFM is also referred to in UNSCR 2235 (2015) which established the OPCW-UN Joint Investigative Mechanism "[t]o identify to the greatest extent feasible individuals, entities, groups, or governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic where the OPCW FFM determines or has determined that a specific incident in the Syrian Arab Republic involved or likely involved the use of chemicals as weapons, including chlorine or any other toxic chemical".[3]

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[1] Paragraph 6.25 of S/1510/2017.

[2] Annex to the Note by the Secretariat S/1255/2015*, dated 10 March 2015 and Add.1, dated 13 March 2015.

[3] Operative paragraph 5 of UNSCR 2235 (2015).

6. The scope of the FFM's mandate does not include the task of attributing responsibility for the alleged use.[4] The FFM's investigation of the incident in Khan Shaykhun of 4 April 2017 was conducted within the legal framework described above.

7. The Secretariat underscores that, consistent with the approach taken during its previous investigations, the FFM applied established methodology and procedures to the investigation of the incident. The methodology is illustrated in detail in Section 3 of the FFM Report. One of the three underlying principles of the FFM's methodology is ensuring the implementation of appropriate chain of custody procedures for evidence collection. The FFM upheld this principle by adhering to the most stringent OPCW guidelines and procedures, including those regarding chain of custody, for the conduct of an investigation of alleged use of chemical weapons, as applicable, and as listed in Annex 1 to the FFM Report, from the time of collection or receipt of evidence, including samples, by the FFM.

8. When the FFM was constrained in the collection of evidence, due to its inability to access the site of the incident shortly after it occurred, the FFM requested that the evidence provided by other parties be supported to the extent possible by documents, photographs, video footage, or witness testimony. The FFM analysed and weighed this evidence, taking into account the degree of separation in the chain of custody between the source and the point of receipt by the FFM and the corroboration provided by the party submitting such evidence.

9. It is the combination, the consistency and corroboration of the evidence gathered as a whole, including the evidence provided by the Syrian Arab Republic, rather than individual items of evidence taken in isolation, which formed the basis of the conclusions of the FFM Report on the Khan Shaykhun incident. The Secretariat further recalls that the biomedical samples of which the FFM had full custody provided incontrovertible evidence that certain individuals were exposed to sarin or a sarin-like substance.

10. Regarding the question of a visit of the FFM to the alleged site of the incident in Khan Shaykhun, as noted in the FFM Report, this area is located outside of the effective control of the Government of the Syrian Arab Republic.[5] Therefore, and upon request of the Secretariat, a negotiator from the Office of the Special Envoy of the UN Secretary General to Syria was made available to the FFM. He communicated with a number of relevant individuals and groups in regard to the safe passage of the FFM to this site. During the later stages of these communications, the FFM visited Damascus and was prepared to deploy to Khan Shaykhun if there had been compelling reasons to do so.

11. However, the formal process to seek security clearance from the United Nations Department of Safety and Security (UNDSS) was never initiated. The initiation of this process would have occurred if it had been decided that there was insufficient evidence obtained by the FFM to fulfil its mandate to determine whether a chemical had been used as a weapon. In this regard, as noted by the OPCW Director-General in his statement to the Council at its Fifty-Fifth Meeting of 5 July 2017, once the positive determination was made by the FFM, based on all the evidence collected, including the samples provided by the Syrian Arab Republic, that sarin had been used for hostile purposes on 4 April 2017, there was no compelling reason which would justify a site visit. In particular, since the mandate of the FFM is confined to determining the use of chemical weapons, the security

[4] Fifth preambular paragraph of EC-M-48/DEC.1; sixth preambular paragraph of EC-M-50/DEC.1; and eighth preambular paragraph of UNSCR 2235 (2015).

[5] Paragraph 7 of S/1510/2017.

risks associated with a deployment to Khan Shaykhun far outweighed any additional corroboration of the facts that had already been established based on a variety of evidence, including that provided by the Syrian Arab Republic. The Director-General therefore decided that the FFM would not undertake an on-site visit to Khan Shaykhun and the formal request for obtaining security clearance from UNDSS was not submitted.[6]

12. Concerning the possibility of a visit of FFM to the Al-Shayrat airbase, the Secretariat reiterates its view that the FFM lacked the mandate and the authority to conduct an investigation at this site. A determination of the point of origin of a possible chemical attack in Khan Shaykhun would have gone beyond the mandate of the FFM, which was limited to establishing the fact whether a chemical had been used as a weapon. This fact was ascertained, in the conclusions of the FFM's report based on sufficient and incontrovertible evidence.

13. Finally, the FFM concluded that the release of sarin that caused the exposure was likely to have been initiated in the vicinity of a crater in the road in the northern part of the town of Khan Shaykhun. As noted in the FFM Report, the FFM received limited information on the dispersal mechanism and therefore was unable to make firm conclusions on that specific matter.[7] Notwithstanding, the FFM fulfilled its mandate, by establishing in a professional and impartial manner that sarin was used as a weapon in Khan Shaykhun on 4 April 2017.

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[6] In accordance with the Memorandum of Understanding between the OPCW and the UNDSS, dated 24 August 2011, the OPCW must fully comply with the instructions of the Designated Officer of UNDSS at the duty station regarding security matters.

[7] Paragraph 1.6 of S/1510/2017.